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ABSTRACT

This pamphlet for people with disabilities provides basic information on the provisions of the Americans with Disabilities Act (ADA) that concern protection from discrimination in employment. Using simple language, the pamphlet provides the following information: what the ADA is, who the ADA is for, who the ADA is not for, how the ADA can help the individual with a disability, definitions of terms, what is meant by "working conditions," who a "qualified worker" is, what is meant by "essential functions," what is meant by "reasonable accommodation," what is meant by "undue hardship," the individual's rights when applying for a job, the individual's rights after being hired but before starting working, the individual's rights after starting to work, ideas for reasonable accommodations, the individual's rights regarding wages and benefits, the individual's rights if fired, what to do if the individual thinks he/she is being discriminated against, the importance of making a record of any possible discrimination, the ADA information hotline, and the procedure for complaining to the Equal Employment Opportunity Commission. Attached are summaries of eight relevant court cases and a list of suggested resources. (Contains 16 references.) (DB)

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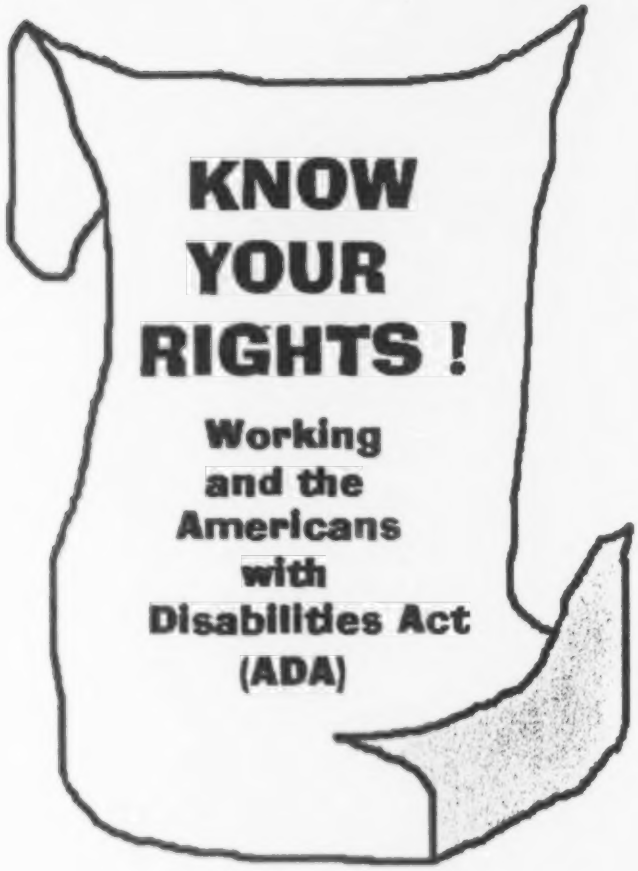

By
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Center on Human Policy
May 1997

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A list of law cases and resources related to the ADA, employment, and people with disabilities is available from the Center on Human Policy. To request a copy, contact the Center at the address above.

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For a person with a disability, getting a job is not always easy. This is not because the person cannot do a job. It is because many bosses without disabilities think that people with disabilities cannot work and will not give them a chance. This is discrimination. The Americans with Disabilities Act (ADA) is there to help you if you have been discriminated against. This manual will help to explain what the ADA is and how it can help you get and keep a job.

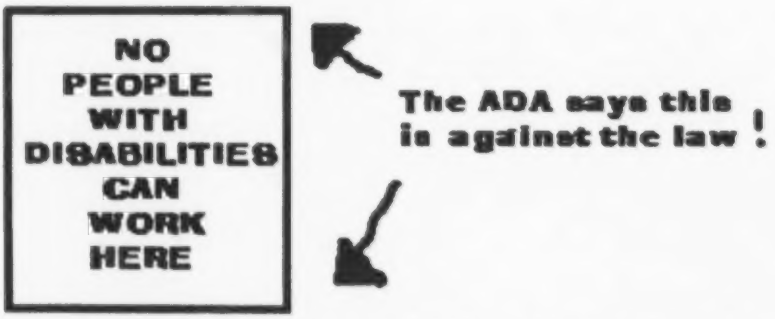
ADA Basics

What is the ADA?

The "ADA" stands for the Americans with Disabilities Act. It is a law that was passed by Congress to give people with disabilities protection from discrimination based on their disability.

Discrimination means that a person is treated unfairly just because he or she belongs to a certain group. For example, it is against the law for someone to say that you cannot apply for a job that you know you can do, just because you have a disability.

Remember, the ADA does not promise you a job. It only promises that you will not be discriminated against because you have a disability if you are not otherwise qualified.



You will not see a sign like this, but many bosses think this way.

Who is the ADA For?

The ADA is for anyone who has a physical or mental disability. Having a disability means that it is difficult for someone to do things like:

- ➔ work
- ➔ learn
- ➔ do personal care at work
- ➔ use their hands
- ➔ speak
- ➔ breathe
- ➔ walk
- ➔ hear
- ➔ see

Who is the ADA Not For?

The ADA may not protect you from discrimination if you cannot do the important parts of the job with or without help.

Also, certain companies do not have to follow the ADA. This is because they are too small or because it would cost them too much money to make the changes you may need to help you do your job. For example, a business which has less than 15 people working there may not have to follow the ADA.

How Can the ADA Help You?

The ADA can help you by protecting you when your boss discriminates against you just because you have a disability. For example, the ADA says that:

- ➔ you cannot be fired just because of your disability
- ➔ you have certain rights when you apply for a job
- ➔ you have certain rights when you are working at your job
- ➔ you even have certain rights when you are fired

Also, the ADA says that your boss may have to make changes to your job or work place to make sure that you are treated fairly:

- ➔ when you apply for a job
- ➔ when you are offered a job
- ➔ in doing the important parts of your job
- ➔ so that you get the same benefits that everyone else you work with gets

Definitions of Terms

Disability: The ADA thinks about a person with a disability in three ways:

1. A person who has a mental or physical disability that makes it hard for her or him to do things like:

   - ➔ working
   - ➔ learning
   - ➔ personal care at work
   - ➔ using your hands
   - ➔ speaking
   - ➔ breathing
   - ➔ walking
   - ➔ hearing
   - ➔ seeing

2. A person who has a record of a mental or a physical disability. For example:

   - ➔ a person was in special education classes when he or she was in school
   - ➔ a mistake was make when your school or doctor said that you had a mental disability when you did not
   - ➔ you used to have a job coach at your old job

3. A person is treated by other people like she or he has a disability. For example:

- ➔ someone at work makes fun of you because it is harder for you to think
- ➔ the people you work with leave you out at the staff party because they think you have a disability
- ➔ your boss does not treat you like an adult, but pats you on the head like a little child

The ADA also gives rights to people who are associated with a person who has a disability. For example:

- ➔ your boss wants to buy some land to build a new restaurant. Your boss does not have a disability, but the landowner will not sell the land to your boss because some of the people who work for her have disabilities.

- you need a person to go to the doctor with you. Under the ADA, that person may have the right to take time off to go with you.

Working Conditions

Whenever the ADA talks about working it is talking about:

- applying for a job
- getting the job
- learning how to do your job
- getting paid
- moving to a better job
- job benefits – like health insurance
- getting laid off or fired from your job
- breaks, staff parties …

Qualified Worker

The ADA says that people with disabilities cannot be treated unfairly about working, as long as the person with the disability is qualified.

In the ADA, a *Qualified Person* with a disability means:

- ➔ you have the skills to do your job
- ➔ you are able to do the important parts of your job by yourself or with some help

Essential Functions

The ADA calls the important parts of your job *Essential Job Functions*. Sometimes it is difficult to figure out the important parts of your job. One easy way to think about the essential functions of a job is to think about things that are the key to the job. For example, the most important part of the job of a bus driver is having a driver's license so he or she can drive the bus.

Other ways to figure out the essential functions of a job are by looking at:

- ➔ what job parts were listed in the description of your job
- ➔ how much time you would spend on each part of the job
- ➔ what your boss thinks are the important parts of your job
- ➔ what other staff, who have the same job as you, do when they work
- ➔ what other people that you work with tell you, or think, are the important parts of your job
- ➔ what would need to be done for your job if you were off for the day

The ADA says a boss may be able to ask you to do things that are not very important to your job. These less important things are called the *nonessential functions* of a job. However, a boss cannot make hiring or firing decisions about you based on nonessential functions.

For example:

A bus driver does not have to work a full shift to be a bus driver. He or she could work shorter shifts and still be a good bus driver.

Reasonable Accommodation

A qualified person with a disability means that you are able to do the important parts of your job by yourself or with some help.

Not everyone on a job can do everything by themselves or work without some flexibility. Many people who work need some help to do their job. The ADA calls this help *Reasonable Accommodation.*

Reasonable accommodations are changes a boss makes to make sure that a qualified person with a disability is treated fairly when:

- ➔ applying for a job
- ➔ your boss is trying to decide who to hire
- ➔ helping you to do the important parts of your job
- ➔ helping you to enjoy the same good things and advantages of the people you work with

It is important to remember that your boss has to help you only if you tell her or him that you have a disability and that you will need some help.

Undue Hardship

While it is true that the ADA says that your boss must make *reasonable accommodations* to help you do your job, your boss does not have to make every change you might need or want.

Some changes cost a lot of money and would be too expensive for a small work place to make. Other changes may mean too many changes for the other people with whom you work.

When changes are too hard or too expensive for your work place to make, the ADA says that these changes cause an *undue hardship* on your boss. When a change is going to cause an undue hardship, your boss may not have to make the change. However, you may want to ask for the change anyway to find out if the change will cost too much or be too difficult for your boss to make.

Your Rights When You Apply For A Job

When you are applying for a job, the boss can ask you questions to see if you are qualified for the job. For example:

If you are applying to be a waiter or a waitress, the boss can ask you if you can take orders.

The boss cannot ask you any questions about your disability. For example:

The boss cannot ask you if you can write.

The boss should make sure that you can fill out the job application or that someone is there to help you fill it out.

The boss cannot ask you to take a medical exam.

The boss cannot ask you if you were in special education.

After You Get The Job
But Before You Start Working

The boss can ask you – and everyone else who works with you – about any medical condition, but only if this condition has to do with the important parts of the job.

The boss may give you a written or physical exam, if all the other people at your workplace also had to take this exam.

If you cannot do the important parts of the job without reasonable accommodations, you can be fired.

When You Start Working

When you start working, your boss can ask you for medical information if it has to do with whether or not you can do the important parts of your job.

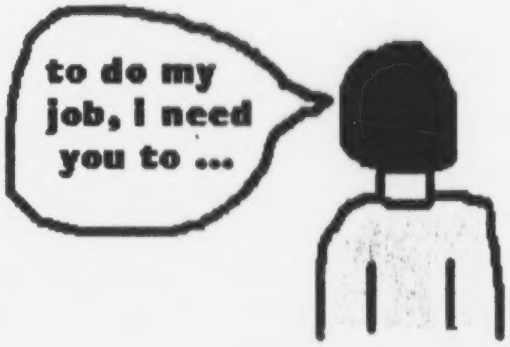
The boss cannot ask you questions about your disability.

Ideas for Reasonable Accommodations

The ADA does not have a list of rules about what is a reasonable accommodation and what is not. You have the right to ask for something that may help you do your job.

Only you know best about what you need to help you, and you can ask for it. If you ask for an accommodation and your boss agrees that this is reasonable, he or she will usually give it to you. However, if your boss thinks that what you have asked for is not reasonable because it will cause an *undue hardship* to the company, you may not get it and will have to ask for something else.

It is very important to remember that you have to ask for a reasonable accommodation. IF YOU DO NOT ASK, YOUR BOSS DOES NOT HAVE TO DO ANYTHING FOR YOU.



You are not allowed to ask your boss for a job coach. This does not mean that you cannot have a job coach, it just means that the ADA says that your boss does not have to pay for the coach. However, there may be other groups where you live that will pay for a job coach for you.

An example of a *reasonable accommodation* about job coaches is:

- ➔ if you have a job coach who doesn't come to work with you all of the time. This job coach could be someone whom you call if you run into trouble, or could be someone whom you meet with at your job or somewhere else about once a week.

There is no such thing as a right or wrong reasonable accommodation. Ask for what you think YOU need to help you do your job.

Here are some examples of reasonable accommodations that you can ask your boss for:

- ➔ treat you as an adult because you are an adult
- ➔ be patient with you if your speech is difficult to understand
- ➔ ask you if you need help before just giving it to you
- ➔ talk to you, not to your job coach, when you are together
- ➔ give you time to put your thoughts together and to speak
- ➔ listen to your ideas about what will help you. The boss should listen to these all of the time, not just when you first start working.
- ➔ use simple words and gestures when talking to you if that is what you prefer

- show you how to do something maybe more than once, while telling you how to do it
- draw a picture about what you need to know
- write down what you need to know
- repeat instructions for you
- tape record instructions rather than giving you written instructions if that is what you would prefer
- give specific directions
- give you flexible scheduling. This may help with medications, appointments, or if you cannot work a full week.
- help you to do what you do best. If there are some parts of your job that you do very well and some parts that you have trouble with, ask your boss if you can change around your job so that you do not have to do the parts that you have trouble with. Some employers may feel that this change is an undue hardship. If this happens, this may not be a reasonable accommodation.

- work in a place by yourself if you are feeling stressed

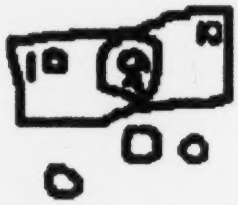
- let you know how you are doing on your job at least once a year or maybe even every week

- support other people to support you. For example, if the boss only allows 30 minutes for lunch, but you need 45 minutes to eat lunch, your friend who also works for the boss will have to leave you after 30 minutes. Ask your boss to allow your friend to have 45 minutes also, so you can eat lunch together.

- have a list of office routines (e.g., coffee break times) to help you fit in and get used to the job

- have some sort of disability awareness program so people can understand better how it is to be in the workplace with a disability, but you should not do this yourself. Your boss cannot ask you to explain your disability to everyone. An outside ADA consultant can come and talk about the ADA and about having a person with a disability in the workplace.

Pay And Benefits



You have a right to get the same pay as everyone else who does the same job. If you work you must receive at least the federal minimum wage, which is now $5.15 an hour. The minimum wage may change.

You have a right to all the benefits that everyone else gets. Some examples of benefits are: health insurance, sick leave, and time off.

Your Rights If You Are Fired

If you are fired, you have the right to know why you were fired. You also have the right of appeal when you are fired. To appeal being fired means to ask your boss that the decision to fire you be reconsidered or made again. Even if you appeal, you may still be fired.

What To Do If You Think You Are Being Discriminated Against

There are lots of things that you can do to get help if you think that a decision to fire you was wrong or that a decision not to hire you was wrong. Here are some ideas of things you can do.

Tell Someone You Trust What Is Happening To You At Your Job

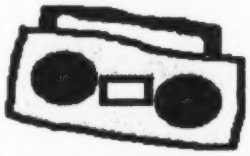
It is a good to tell someone you trust what is happening to you at your job. You know best who the people are in your life whom you trust the most. Some examples of people you trust might be:

- your husband, wife, or partner
- the head of your self-advocacy group
- the advisor at your self-advocacy group
- your job coach
- your boss
- your parents, a brother, or a sister
- a good friend of yours

Make A Record Of What Is Happening

After you talk to someone you trust about what is happening at your job, it is always a good idea to make a record, or to have someone help you make a record, of your story. Making a record of your story is not very difficult. Some ways to make a record of your story are:

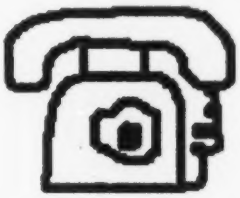
- ➔ writing down your story or having someone help you to write it down
- ➔ speaking your story into a tape recorder and then having someone you trust write it up



It is important to record your story because often it takes a couple months to get help. In a couple of months, and after lots of people ask you questions about what happened to you, it may be hard to remember your story.

If your story is written down or if you have it on tape, then you have a record of your story to make it easy to remember what happened to you at your job.

Calling The ADA Information Hotline



After you talk to someone you trust, if *you* still think that you are being treated unfairly at your work place you can call, or get someone to help you call, the *ADA information hotline*. You can tell the people at the hotline what is happening to you at your job and they can:

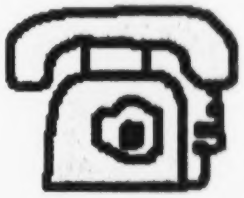
- ➔ tell you if they think you are being treated unfairly
- ➔ give you some suggestions as to what you might want to do
- ➔ send you information about your job rights at under the ADA

The telephone number for the ADA hotline is at the back of this booklet.

Talking To Your Boss

After you get your ADA information in the mail if *you want to* you may show this information to your boss to remind him or her that you have job rights under the ADA. One of these rights is the right to be treated fairly at your job. If you do not want to talk to your boss alone, it is okay. It is okay to take someone you trust with you when you go to talk to your boss.

Calling The EEOC To Make A Complaint



If after you talk to your boss, he or she does nothing about what is happening to you at your job, or if you do not want to talk to your boss, then you can call the EEOC to make a complaint about what is happening to you at your job. The EEOC stands for the Equal Employment Opportunity Commission. You would have to call the EEOC within 180 days of when the problems at your work first started to happen. When you file your complaint with the EEOC they will want to know

what happened at you job – your record that you made before will be helpful here.

After you call the EEOC they will investigate your complaint. If the EEOC thinks that your boss is discriminating against you, then they will try to talk your boss or the people you work with to try to get them to stop discriminating against you.

If they still will not help you with your work, the EEOC will think about whether or not to take your work place to court to make sure that your boss is discriminating against you. If you do end up going to court and you can prove that you were discriminated against you could get:

- back pay – if you are fired you may be able to ask for the pay you would have gotten if you had not been illegally fired
- your job back with the reasonable accommodation you need to do your job
- compensation money – this means money for your pain and suffering because you were discriminated against
- your lawyer's fees paid for you
- injunctive relief – you could get a court order telling your boss how to treat you

Phone Numbers

Here are the numbers of some of the places that you can call if you think that you have been discriminated against under the ADA:

➔ **ADA Hotline**

(800)-514-0301 (Voice)
(800)-514-0383 (TDD)
http://www.usdoj.gov

➔ **Equal Employment Opportunity Commission**

(202) 663-4900 (Voice)
(800) 800-3302 (TDD)
(202) 663-4494 (TDD for 202 Area Code)

For ADA documents:
(800) 669-3362 (Voice)
(800) 800-3302 (TDD)

For ADA questions:
(800) 669-4000

➔ **Regional Disability and Business Technical Assistance Center**

In New York:
(609) 392-4004 (Voice)
(609) 392-7004 (TTD)

This manual is also available in large print form, on cassette, and on IBM compatible computer disc.

ADA Appendix of Information to Accompany Manual

Bibliography of Resources:

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Wehman, P. (Ed) (1993). The ADA mandate for social change. Baltimore: Paul H. Brookes Publishing Co.

Some Relevant Cases about Employment, Mental Retardation, and the ADA

There have not been many complaints filed under the ADA regarding mental retardation and employment. To our knowledge, only one complaint has developed into a court case. You can get information on this by calling the EEOC (the number is listed in the manual).

Hertz Corporation Case Filed from the Detroit EEOC (note this case has yet to go to court)

The EEOC filed its first case involving people labeled with mental retardation, employment, and the ADA in May of 1996. The case involves two people labeled with mental retardation who worked part-time for the Hertz corporation. Each employee had a job coach hired for them by a non-profit agency, Arkay. The two employees had received very positive job ratings and were potentially down to have their employment increased to full-time. However, they arrived at work one day to find they had been fired. Apparently, Hertz fired the two employees because their job coaches were allegedly caught kissing in the parking lot. The two employees filed a discrimination complaint with the Detroit office of the EEOC and the EEOC agreed that discrimination had taken place, claiming that Hertz failed to provide reasonable accommodation by not requesting that Arkay provide new job coaches. Hertz has filed a third class action suit against Arkay, which has implications for non-profit agencies that support people with disabilities in open employment.
(REF: personal communication with Ardele Rapert at the Detroit EEOC)

Department of Social Services ex. rel. Jenny S. V. Mark S.,
593 N.Y.S.2d 142 (N.Y. Family Court, 1993)

Although his case does not relate directly to employment, it does relate to the testifying of persons with communication difficulties in court in general under the ADA. In 1993 this New York family court held that a child or children with autism, who allegedly had been sexually abused, would not be permitted to testify in court through the use of facilitated communication because:

(a) facilitated communication is not a form of communication that is generally accepted within the scientific community
(b) the use of facilitated communication is not required by the ADA

(REF: 1993 MPDLR 17(4), p. 385)

Marvello V. Chemical Bank,
923 F. Supp. 487 (S.D.N.Y. 1996).

Marvello, a SSI and SSD recipient with a traumatic brain injury, alleged that he had been discriminated against by his potential future employer, Chemical Bank, having been denied the job as a result of requesting the reasonable accommodation of a "job coach" in his job interview. Chemical Bank claimed that Marvello could not request reasonable accommodation as he was a recipient of SSI and SSD. Here, it was found that a person who receives SSI or SSD was not automatically precluded from ADA employment discrimination protections.
(REF: 1996 MPDLR 20(4), p. 508)

Fernbach v. Dominick's Finer Foods,
No. 95 C 5252 (N.D. Ill. July 30, 1996)

Michael Fernbach sued under the ADA alleging that he had been discriminated against at his work place on the sole basis of his cognitive disability. Fernbach, who was caught removing unpurchased merchandise form his work locker and consequently fired, lost on the basis that he was fired not because of his disability, but for violating the store's employee merchandise policy.
(REF: 1996 MPDLR 20(5), p. 689)

Greenberg v. New York,
919 F. Supp. 637 (E.D.N.Y. 1996)

Greenberg alleged that he was discriminated against when not hired to a position as a corrections officer because he was perceived as having a mental disability (problems making safety decisions and performing under stress). However, despite this claim, the court found that under the ADA Greenberg was not considered to have a disability because his disability did not substantially limit one or more of his major life activities.
(REF: 1996 MPDLR 20(3), p. 352)

Patterson v. Glickman,
No. 01953173 (EEOC January 26th, 1996)

Here, the EEOC reduced relief granted to an employee of the Department of Agriculture in an earlier decision. Patterson was denied a foreign service position at the Department of Agriculture due to his daughter having a disability, in violation of the prohibition on discrimination based on a person's association with a person with a disability.
(REF: 1996 MPDLR 20(3), p.366)

Miller v. CBL Cos.,
Civ. No 95-24-SD (D.N.H. November 29th, 1995).

Miller was manager with CBL Companies. She also had a son, born in 1988 with Down Syndrome. Miller requested time off from her job to accompany her young son to his speech therapy sessions, claiming that this time off was a reasonable accommodation under the ADA. Following this request, Miller's employment with CBL was terminated. She alleged that the termination and a number of other denied promotions and career development opportunities were the direct result of her having a son with a disability. That is, she alleged that she was being discriminated against under the ADA for being associated with a person with a disability. The court found that CBL was not liable for the denied promotions and career development opportunities as these events took place before the ADA became law. The court also ruled that Miller's job termination was discrimination under the ADA, but her claim that time off to accompany her son as a reasonable accommodation was not valid since reasonable accommodations apply to the employee and not an employee's family member with a disability. (Note: The judge suggested that Miller did have claim under the Family and Medical Leave Act regarding time off to accompany her son).
(REF: 1997 MPDLR 20(1), p. 77)

Kent v. Derwinski,
790 F. Supp. 1032 (E.D Wash. 1991)

Dianne Kent was hired by a Veteran's Administration hospital under a special work program for persons with disabilities. Kent was labeled with having mental retardation and emotional difficulties and had previously had her work at the hospital rated as "fully satisfactory." A second, new supervisor did not prevent Kent's coworkers from taunting Kent on the job. Kent experienced two nervous breakdowns and eventually resigned after the hospital failed to reassign her to another position. The court found that although the hospital had accommodated Kent in the past, recent accommodations had been insufficient to meet Kent's needs and that she had been discriminated against on the basis of her having a disability.
(REF: 1992 MPDLR 16(4), p. 519)

Places to Go for More Information

The Arc - Publications Department National Headquarters
For Arc documents
P.O. Box 1047
Arlington, Texas 76004
(800) 433-5255

Equal Employment Opportunity Commission

(202) 663-4900 (Voice)
(800) 800-3302 (TDD)
(202) 663-4494 (TDD for 202 Area Code)

For ADA documents:
(800) 669-3362 (Voice)
(800) 800-3302 (TDD)

For ADA questions:

(800) 669-4000

Regional Disability and Business Technical Assistance Center

In New York:
(609) 392-4004 (Voice)
(609) 392-7004 (TTD)

ADA Information Line for Documents and Questions

(800)-514-0301 (Voice)
(800)-514-0383 (TDD)
http://www.usdoj.gov

Job Accommodation Network - President's Committee on Employment of People with Disabilities

(800)-526-7234 (Voice/TDD)

Just a Reminder: Your local advocacy organizations may also be helpful.